

ORDINANCE NO. 97- 40

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, TO BE KNOWN AS THE "ROADSIDE VENDORS ORDINANCE"; PROVIDING FOR TITLE; AUTHORITY; PERMIT REQUIRED FOR COMMERCIAL USE OF COUNTY RIGHTS-OF-WAY; PERMIT BY COUNTY ENGINEER; CRITERIA FOR VENDING LOCATIONS; CRITERIA FOR PERMIT ISSUANCE; APPLICATION FOR PERMIT; FEES; CONDITIONS OF PERMIT; ATTIRE; DAMAGE TO COUNTY ROADS OR RIGHTS-OF-WAY; COUNTY-MANDATED RELOCATION; VOLUNTARY RELOCATION; RENEWAL OF PERMIT; REVOCATION OF PERMIT; APPEAL; LIMITED EXEMPTIONS; VIOLATION OF ORDINANCE; ENFORCEMENT; APPLICABILITY; SAVINGS CLAUSE; REPEAL OF ORDINANCE NOS. 90-4, 94-22, AND 97-5, AND LAWS IN CONFLICT; SEVERABILITY; INCLUSION IN THE CODE OF LAWS AND ORDINANCES; EFFECTIVE DATE.

WHEREAS, pursuant to Florida Statutes, Section 336.02, the Board of County Commissioners of Palm Beach County, Florida, is invested with the general superintendence and control of County roads; and

WHEREAS, to better serve the residents and visitors of the County, the Board of County Commissioners of Palm Beach County, Florida, enacted Ordinance No. 90-4, known as the Roadside Vendors Ordinance, permitting limited use of County owned or maintained rights-of-way for the sale of produce, plants, flowers and prepared foods by regulating and controlling the location, access and type of commercial activities allowed on rights-of-way within the unincorporated area of the County; and

WHEREAS, the Board of County Commissioners of Palm Beach County, Florida, amended the Roadside Vendors Ordinance through the enactment of Ordinance Nos. 94-22 and 97-5; and

WHEREAS, regulation of the commercial use of public rights-of-way, as prescribed by this Ordinance, is in the best interest of and promotes the health, safety, and general welfare of the citizens of Palm Beach County and the traveling public; and

1 **WHEREAS**, the Board of County Commissioners of Palm Beach County, Florida,
2 desires to continue regulating the commercial use of the rights-of-way of all roads, streets,
3 and highways under its jurisdiction, for the protection of the health, safety, and welfare of
4 the public; and

5 **WHEREAS**, the Board of County Commissioners of Palm Beach County, Florida,
6 has determined that unless regulated, the sale of merchandise from temporary wayside stands
7 along the streets and roadways of Palm Beach County, creates a traffic hazard to motorists
8 and pedestrians in addition to being aesthetically unsightly; and

9 **WHEREAS**, the Board of County Commissioners of Palm Beach County, Florida,
10 finds that a proliferation of roadside vendors who appear partially nude in order to attract
11 customers adversely affects the health, safety and welfare of citizens and visitors of Palm
12 Beach County; and

13 **WHEREAS**, the Board of County Commissioners of Palm Beach County, Florida,
14 finds and determines that persons who choose to appear partially nude on County owned or
15 maintained rights-of-way while conducting commercial activities are engaging in conduct
16 which often serves to impose their partial nudity on others who do not seek it out, who are
17 not able to reasonably avoid observing it, and who may be offended or distressed thereby;
18 and

19 **WHEREAS**, the Board of County Commissioners of Palm Beach County, Florida,
20 finds that it is necessary and desirable to ensure that roadside vendors are appropriately
21 attired; and

22 **WHEREAS**, the Board of County Commissioners of Palm Beach County, Florida,
23 finds and determines that there are increasing incidents of partial nudity by persons on
24 County owned or maintained rights-of-way while conducting commercial activities which
25 are readily visible to the public; and

26 **WHEREAS**, the Board of County Commissioners of Palm Beach County, Florida,
27 finds and determines that appearing partially nude on County owned or maintained rights-of-

1 way while conducting commercial activities distracts motorists, thereby compromising the
2 public safety; and

3 **WHEREAS**, the Board of County Commissioners of Palm Beach County, Florida,
4 finds that the passage of this Ordinance is necessary to preserve the basic character of the
5 unincorporated community of Palm Beach County; and

6 **WHEREAS**, the Board of County Commissioners of Palm Beach County, Florida,
7 desires to protect and preserve the unique character of Palm Beach County as a destination
8 for families, tourists, and businesses; and

9 **WHEREAS**, the Board of County Commissioners of Palm Beach County, Florida,
10 finds and determines that the prohibitions contained herein are reasonable restrictions
11 required so as to regulate conduct which is adverse to public order, morality, and decency
12 within Palm Beach County, when such conduct takes place at locations where such conduct
13 is readily visible to the public; and

14 **WHEREAS**, the Board of County Commissioners of Palm Beach County, Florida,
15 after review and upon recommendation of staff, finds and determines that modifications are
16 necessary to the Roadside Vendors Ordinance to better serve and protect public order,
17 morality, and decency for the citizens and visitors of Palm Beach County by continuing to
18 regulate the sale of produce, plants, flowers, and prepared foods; and

19 **WHEREAS**, the Board of County Commissioners of Palm Beach County, Florida,
20 finds and determines that due to the numerous revisions to Ordinance 90-4, as amended, it
21 is in the best interest of the public that the Ordinance and all amendments should be repealed
22 and replaced with a new ordinance.

23 **NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY**
24 **COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA**, that:

25 **SECTION 1. TITLE**

26 This Ordinance shall be cited as the "Roadside Vendors Ordinance."

1 **SECTION 2. AUTHORITY**

2 This Ordinance is adopted pursuant to the authority granted to charter counties under
3 Article VIII, Section 1 (g) of the State of Florida Constitution, and Chapter 125, Florida
4 Statutes, and Section 163.3161, et seq., Florida Statutes, regarding local government
5 comprehensive planning.

6 **SECTION 3. PERMIT REQUIRED FOR COMMERCIAL USE OF COUNTY**
7 **RIGHTS-OF-WAY**

8 A. It is unlawful and subject to the penalties and procedures provided in this
9 Ordinance to make any commercial use of County-owned or maintained rights-of-way or
10 appendages thereto, including but not limited to, rest areas, wayside parks, boat launching
11 ramps, weigh stations and scenic easements in the unincorporated area of the County,
12 without first obtaining a permit for permissible use in accordance with the provisions of this
13 Ordinance. Commercial use includes, but is not limited to, the sale, advertising, or display
14 for sale of any merchandise; servicing or repairing of any vehicles, except for rendering of
15 emergency service; storage of vehicles being serviced or repaired on abutting property or
16 elsewhere; solicitation for the sale of goods, property or services, whether for profit or
17 charity; and display of advertising of any kind.

18 B. A Roadside Vendor Permit (hereinafter "Permit") is valid only to the
19 individual, partnership or corporation (hereinafter "Business Entity") to whom it is issued
20 and who is named therein, and cannot be sold or transferred to another Business Entity.

21 C. Notwithstanding anything herein to the contrary, no occupational license
22 issued pursuant to Chapter 17, Article II, of the Palm Beach County Code, shall be deemed
23 a Permit to vend from any County right-of-way.

24 **SECTION 4. PERMIT BY COUNTY ENGINEER**

25 The Board of County Commissioners of Palm Beach County, Florida, hereby
26 authorizes and empowers the County Engineer or his duly authorized representative(s) to

1 receive and review Permit applications, collect fees, issue, renew, revoke and deny Permits
2 for commercial use of County rights-of-way in the unincorporated area of the County.

3 **SECTION 5. CRITERIA FOR VENDING LOCATIONS**

4 It is unlawful and subject to penalties and procedures provided in this Ordinance for
5 any Business Entity to vend at a location on County rights-of-way in the unincorporated area
6 of the County which has not been approved by the Engineering and Public Works
7 Department (hereinafter "Engineering Department"). Location is defined as the site or
8 position where vending may be permitted.

9 A. The Engineering Department shall NOT approve Locations:

- 10 1. On state or private roads, private property, or within municipalities.
- 11 2. On the side of the road which contains curbing, public sidewalks,
12 driveways, bike paths or pathways, or on improved or maintained swale areas.
- 13 3. Which abut residentially developed property. This prohibits vending
14 in front of (on the same side of the street as) a residence, unless there is an intervening
15 easement or right-of-way (e.g., a canal) separating the Location from the residence.
- 16 4. Within five hundred (500) feet of an established ongoing legally zoned
17 business selling similar commodities. Except that an ongoing legally existing business which
18 complies with all applicable land development regulations may be issued a Permit to operate
19 in conjunction with that business on County right-of-way abutting said business, only to the
20 extent allowed in the zoning district applicable to the abutting property.
- 21 5. Which require, promote or cause any vehicle to stop, stand or park in
22 violation of, or visually impair an official traffic control device, including but not limited to,
23 signs, signals, and markings erected by authority of the County for the purpose of regulating,
24 moving or guiding traffic.
- 25 6. On two-lane roads in a residentially zoned (does not include zoned
26 agricultural/residential) area within five hundred (500) feet of residential unit and/or two
27 hundred (200) feet of residential property line.

1 7. Within three hundred (300) feet of any property containing a pre-school,
2 elementary, middle or high school facility.

3 8. Within three hundred (300) feet of any property containing a church,
4 temple, synagogue or other place of worship.

5 9. Within three hundred (300) feet of any property containing an
6 established day care facility. Private residences are exempt from this restriction.

7 B. The Engineering Department shall only approve Locations:

8 1. On a County right-of-way in the unincorporated area of the County.

9 2. That are a minimum of one hundred (100) feet from the intersection of
10 any two (2) road rights-of-way and/or a driveway;

11 3. That are at least fifteen hundred (1500) feet from any other approved
12 Location.

13 4. With adequate sight distance and parking area to ensure safe vending
14 operation with respect to normal movement of traffic in relation to the location's position on
15 the right-of-way.

16 C. If, after a Permit has been issued, a Location becomes ineligible due to
17 changes including, but not limited to, traffic flow, storage, curbing, signalization, speed
18 limits, development, pathways, sidewalks or municipal boundaries, the Permit must be
19 relocated. If the location conflicts with any construction, reconstruction, or any project
20 performed or permitted by the County or its authorized representative(s) which is in the
21 interest of the public, the Permit is suspended for the duration of the conflict and may be
22 relocated.

23 **SECTION 6. CRITERIA FOR PERMIT ISSUANCE**

24 A. The sale of produce, plants, flowers, and prepared foods from locations
25 meeting the requirements of this Ordinance may be allowed on County rights-of-way in the
26 unincorporated area of the County, provided the Business Entity first obtains a Permit from
27 the Engineering Department.

1 B. Permits are issued to a given Business Entity (hereinafter "Permittee"). The
2 Permittee may be an individual, partnership or corporation. All forms, including but not
3 limited to, *Application for Permit*, *Intent to Permit*, and *Permit*, must contain the original
4 signature of the Permittee.

5 1. If the Permittee is a partnership, all partners must sign all forms. A
6 copy of the partnership's paperwork that has been filed with the Secretary of State must be
7 provided.

8 2. If the Permittee is a corporation, a designated officer/manager must sign
9 all forms. A copy of the corporation's paperwork that has been filed with the Secretary of
10 State, listing the principal officers/managers, must be provided.

11 3. Any Permittee change (e.g., individual elects to incorporate) requires
12 a new *Application for Permit* and subjects the applicant to all provisions of this Ordinance.
13 A name change resulting from a marriage or divorce, in and of itself, does not impact Permit
14 status.

15 C. A Permit is issued for a single product category. The four listed below are the
16 only allowable categories. No other products may be sold on County rights-of-way within
17 the unincorporated area of the County.

18 1. Prepared Food. Food prepared for human consumption that may be
19 consumed immediately upon purchase without further preparation.

20 2. Flowers. Fresh cut or live potted flowers; not artificial or synthetic.

21 3. Plants. Live plants, other than flowers, that can continue growing in
22 a pot or be planted in the ground.

23 4. Produce. Fresh, uncooked agricultural plant-type products intended for
24 human consumption.

25 D. A maximum of two (2) allowable Permits can be issued to a given Business
26 Entity at any given time. The number of allowable Permits can be altered as a result of
27 revocation.

1 E. Only one Permit shall be issued for a Location.

2 F. The Engineering Department may deny Permit applications, establish special
3 restrictions (including but not limited to, restricting hours of operation), or revoke Permits
4 based on violation of any applicable federal, state or local laws, ordinances, rules or
5 regulations.

6 G. Permits are issued for a calendar year and expire on December 31 of each year.

7 **SECTION 7. APPLICATION FOR PERMIT**

8 A. The following information is to be provided on an *Application for Permit*,
9 available from the Engineering Department:

10 1. Type of application including, but not limited to, new, renewal, County-
11 mandated relocation, voluntary relocation.

12 2. Type of business including, but not limited to, sole proprietor,
13 partnership, corporation.

14 3. Applicant's name must appear on all subsequent required documents.
15 If the applicant is a corporation, the name of a contact individual who is an officer/manager
16 of the corporation must also be specified. If the applicant is a partnership, the names of all
17 partners must be specified.

18 4. Any applicant intending to conduct business under any name other than
19 applicant's legal name (e.g. d/b/a) must provide a copy of the Fictitious Name paperwork
20 that has been filed with the Secretary of State. The Fictitious Name must also appear on all
21 subsequent required documents, including but not limited to, Occupational License, Sales
22 Tax Number. Performance Bond and Certificate of Insurance.

23 5. Mailing address and telephone number(s) of the applicant.

24 6. Product category to be sold.

25 7. Requested Location including road name, side of road (north, south,
26 east, west), and distance, in feet, from the nearest intersection.

1 8. Execution of an indemnification agreement stating that in consideration
2 of the County issuing a Permit, pursuant to the provisions of this Ordinance, the Permittee
3 hereby releases, holds harmless, and agrees to indemnify and defend the County, its agents,
4 employees, and successors from any and all liability, causes of action, claims, and/or
5 lawsuits, as well as any and all damages, judgments, settlements, attorney fees, costs and
6 other expenses that arise or may ever arise as a result of the vending operation at an
7 approved Location.

8 B. Applicant must submit the completed, signed *Application for Permit*, along
9 with applicable fees to the Engineering Department.

10 C. The Engineering Department shall evaluate the availability of the requested
11 Location. If the requested Location is found to be ineligible, the applicant may request an
12 alternate location, but must pay an additional location evaluation fee for each alternate
13 location requested.

14 D. Once a Location is approved (hereinafter "Vending Location"), the applicant
15 shall be issued an Intent to Permit (hereinafter "Intent"). This Intent is needed to obtain an
16 occupational license from the County. An Intent is valid for twenty (20) business days from
17 date of issuance. An Intent essentially reserves the Vending Location while the applicant
18 obtains all necessary documents. The Intent does not allow the applicant to operate at the
19 Vending Location. If an Intent expires before a Permit is issued, the Vending Location shall
20 become available to others and the applicant may reapply.

21 E. A Permit shall be issued only after the applicant has provided the Engineering
22 Department with:

- 23 1. An original Certificate of Insurance evidencing the following:
- 24 a. Name of insured is same as the applicant's name on *Application*
25 *for Permit* (including Fictitious Name, if applicable).

1 b. Commercial general liability insurance, including contractual
2 liability, in the minimum amount of Three Hundred Thousand Dollars (\$300,000.00) per
3 occurrence.

4 c. Coverage effective through or beyond the Permit expiration date.

5 d. Palm Beach County as both certificate holder and additional
6 insured.

7 e. Vending Location as specified on *Application for Permit* (a
8 single policy may cover multiple locations).

9 2. A copy of a receipt, showing payment in full, for insurance coverage
10 specified above.

11 3. A performance bond, or other satisfactory security, in the minimum
12 amount of One Thousand Dollars (\$1,000.00) to secure any costs which may be incurred by
13 the County due to applicant's noncompliance with this Ordinance or damage resulting to
14 roadway pavements, sidewalks or other improvements. The bond, or other security, must be
15 issued to same name as the applicant's name on *Application for Permit* (including Fictitious
16 Name, if applicable) and must specify Vending Location(s) covered; coverage must be
17 through or beyond Permit expiration date. Each bond, or other satisfactory security, must
18 be for only one Permittee. One performance bond, or other satisfactory security, may be
19 used for two (2) Permits issued to same Permittee.

20 4. A current Palm Beach County occupational license with:

21 a. Licensee's name, same as the applicant's name on *Application*
22 *for Permit* (including Fictitious name, if applicable);

23 b. Vending Location as specified on *Application for Permit*; and

24 c. Product category as specified on the *Application for Permit*.

25 5. For all product categories except Produce, evidence of a current Palm
26 Beach County sales tax number, as provided by Florida Department of Revenue laws and/or
27 regulations, issued to same name as the applicant's name on *Application for Permit*

(including Fictitious Name, if applicable). A sales tax number from another county is not sufficient. One sales tax number may be used for two (2) Permits issued to the same Permittee.

6. For Prepared Food only, a valid Hotel and Restaurant License issued to same name as applicant's name on the *Application for Permit* (including Fictitious Name, if applicable).

7. Payment of all applicable fees.

F. Each Permit issued by the Engineering Department shall:

1. Specify Permittee's name (including Fictitious Name, if applicable), Vending Location, product category, expiration date of Permit, insurer and policy expiration date.

2. Specify authorized hours of operation, which shall be one-half (½) hour before sunrise to one-half (½) hour before sunset, except as may be otherwise restricted by the Engineering Department.

3. List any special conditions and/or restrictions necessary to assure compliance with this Ordinance and to protect the public from undue harm or risk.

4. Include a summary of the provisions of this Ordinance, to be signed by Permittee, certifying that Permittee has read and understands the provisions and agrees to abide by them.

5. Be accompanied by an official, waterproof, metal Permit plate.

SECTION 8. FEES

A. A nonrefundable application fee of Twenty-Five Dollars (\$25.00) shall be submitted with the *Application for Permit*. This fee is intended to cover the cost of processing an application and conducting one location evaluation. It applies to applications for new Permits, renewals and voluntary relocations. Applications for County-mandated relocations are exempt from this fee.

B. A nonrefundable annual Permit fee of One Hundred Forty Dollars (\$140.00) shall be paid at the time of Permit issuance. This fee is intended to cover the cost of issuing Permits, administering the Roadside Vendor Program, addressing complaints, performing inspections, and general enforcement of this Ordinance. The fee shall be Seventy-Five Dollars (\$75.00) for Permits issued on or after June 1 of a particular year.

The only exception to this nonrefundable fee is when a Permit has been issued in error. In such cases, a pro-rated portion of the annual Permit fee shall be refunded to the applicant, upon request, when a Permit for an alternative location is not issued.

C. Nonrefundable miscellaneous fees shall be charged as follows:

1. Wait List fee: \$10.00. If an applicant desires a Vending Location currently permitted to another Business Entity, the applicant may submit a Wait List Application for that Vending Location. (Note: Wait Lists expire annually on January 31. If the Vending Location is still desired beyond January 31, a new Wait List Application and fee must be submitted.)

2. Location evaluation fee: \$15.00. This fee applies when requested the Location is found ineligible and the applicant requests an alternate location.

3. Replacement of metal plate: \$15.00.

4. Replacement of paper Permit: \$5.00.

D. No Permits shall be issued to a given Business Entity having unpaid fees.

E. Typical fee structures include:

	<u>Application</u>	<u>Permit</u>	<u>Total</u>
1. New Permit (prior to 6/1)	\$25.00	\$140.00	\$165.00
2. New Permit (6/1 or later)	\$25.00	\$ 75.00	\$100.00
3. Renewal	\$25.00	\$140.00	\$165.00
4. Mandated Relocation	N/A	N/A	N/A
5. Voluntary Relocation	\$25.00	N/A	\$ 25.00
6. Additional Location evaluation	\$15.00	N/A	\$15.00

1 **SECTION 9. CONDITIONS OF PERMIT**

2 Once issued, Permits are valid subject to the following conditions which apply to both
3 Permittees and their employees (hereinafter collectively referred to as "Vendors"). Failure
4 to comply with these conditions shall result in the assignment of points which may result in
5 revocation of the Permit.

6 A. A Permit is valid only for the specific Business Entity to whom it was issued.
7 No Permit may be sold or transferred to another Business Entity.

8 B. The Vendor must not set-up prior to authorized hours of operation and must
9 vacate the Vending Location upon the close of authorized hours.

10 C. The Vendor must not engage in any violence or disturbance at the Vending
11 Location which would necessitate law enforcement intervention.

12 D. The Vendor may operate only from the Vending Location specified on the
13 Permit.

14 E. The Vendor may be required to cease vending within twenty-four (24) hours
15 of notice by the Engineering Department of County-mandated relocation.

16 F. All equipment and items used in the vending operation are to be removed from
17 the right-of-way one-half (1/2) hour before the end of the vending day as stated on the Permit,
18 and are not to be replaced until the next authorized time of operation.

19 G. No Vending Location shall be operated in such a manner as to require, promote
20 or cause any vehicles to stop, stand or park in violation of, or visually impair an official
21 traffic control device, including but not limited to, signs, signals and markings erected by
22 authority of the County for the purpose of regulating, moving or guiding traffic.

23 H. The vending vehicle must be set back a minimum of twelve (12) feet from the
24 travel lane to ensure "adequate site safe distance."

25 I. Permittee must maintain required minimum general liability coverage and
26 performance bond, or other satisfactory security, through the end of the Permit year.

1 J. Only the product category specified on the Permit may be sold.

2 K. Freestanding signs, flags, banners, tents, tarpaulins or awnings are not allowed
3 within the road rights-of-way. All signs, flags, banners, tents, tarpaulins or awnings must be
4 attached to, or resting against the vending vehicle/equipment. No tables, chairs or umbrellas
5 are to be set up for use by customers. In addition, any permitted operation, pursuant to this
6 Ordinance, shall not display or otherwise erect freestanding signs, flags, banners or tents on
7 public or private property within five hundred (500) feet of the permitted operation.

8 L. Vendors shall maintain mobility at all times of operation. A vehicle must be
9 at the Vending Location to provide a means of immediate evacuation in case of an
10 emergency.

11 M. The vending area is to be kept free from garbage, litter and debris and in
12 compliance with all applicable health laws.

13 N. Vendors must notify the Engineering Department of any site changes which
14 impact eligibility of the Vending Location. Examples: installation of a sidewalk, driveway,
15 bike path or pathway; residential development; other road construction in the area.

16 O. Both Permit and Permit plate must be maintained at the Vending Location
17 during all times of operation, and be available upon request. The Permit plate shall be clearly
18 visible from the road.

19 P. The total vending area of operation is not to exceed three hundred (300) square
20 feet. This includes space taken up by the vending vehicle, signs, equipment, product and any
21 awnings, tents, canopies, etc.

22 Q. The Permittee must provide the Engineering Department with written
23 notification of a change of address.

24 R. The Vendor must be in compliance with all applicable federal, state and local
25 laws, ordinances, rules and regulations.

SECTION 10. ATTIRE

All vendors shall be sufficiently clothed with a fully opaque covering so that no portion of the male or female genitals, pubic area, 1/3 of the buttocks, as described herein, and any portion of the female breast below the top of the areola is exposed. Buttocks shall be defined as: The area at the rear of the human body (sometimes referred to as the gluteus maximus) which lies between two imaginary straight lines running parallel to the ground when a person is standing, the first or top such line being 1/2 inch below the top of the vertical cleavage of the nates (i.e., the prominence formed by the muscles running from the back of the hip to the back of the leg) and the second or bottom such line being 1/2 inch above the lowest point of the curvature of the fleshy protuberance (sometimes referred to as the gluteal fold), and between two imaginary straight lines, one on each side of the body (the "outside lines"), which outside lines are perpendicular to the ground and to the horizontal lines described above and which perpendicular outside lines pass through the outermost point(s) at which each natis meets the outer side of each leg. Notwithstanding the above, buttocks shall not include the leg, the hamstring muscle below the gluteal fold, the tensor fasciae latae muscle or any of the above-described portion of the human body that is between either (i) the left inside perpendicular line and the left outside perpendicular line or (ii) the right inside perpendicular line and the right outside perpendicular line. For the purpose of the previous sentence the left inside perpendicular line shall be an imaginary straight line on the left side of the anus (i) that is perpendicular to the ground and to the horizontal lines described above and (ii) that is 1/3 of the distances from the anus to the left outside line, and the right inside perpendicular line shall be an imaginary straight line on the right side of the anus (i) that is perpendicular to the ground and to the horizontal lines described above and (ii) that is 1/3 of the distance from the anus to the right outside line. (The above description can generally be described as covering 1/3 of the buttocks centered over the cleavage for the length of the cleavage.)

1 **SECTION 11. DAMAGE TO COUNTY ROADS OR RIGHTS-OF-WAY**

2 The Permittee is required to maintain the integrity of the pavement edge and
3 stabilization of the road in accordance with accepted engineering standards as set forth in
4 the *Manual of Uniform Minimum Standards for Design, Construction and Maintenance for*
5 *Streets and Highways*. Failure to do so is a violation of this Ordinance.

6 The County Engineer or his duly authorized representative(s) may issue a violation
7 if any County road, right-of-way, sidewalk, bike path or pathway is damaged or impaired in
8 any way because of operation of a Vending Location pursuant to this Ordinance. The
9 Permittee must contact the Engineering Department within three (3) business days of
10 notification of violation to coordinate necessary repairs.

11 If contact is not made within the designated time frame, the County shall undertake
12 the necessary repairs and the Permittee shall be responsible, either by direct payment or from
13 posted surety, for all costs incurred by the Engineering Department. If full payment is not
14 received by the specified date, the Permit shall be suspended until full payment is received.
15 No renewals shall be issued to a Business Entity who has any unpaid fees and/or bills.

16 It is a violation of this Ordinance to vend with a suspended Permit.

17 **SECTION 12. COUNTY-MANDATED RELOCATION**

18 A. Any Permit issued under this Ordinance shall not constitute nor be construed
19 as permitting a permanent location. Each Permit is subject to the County's right to use the
20 right-of-way at any time for roadway or other valid public purpose, including but not limited
21 to, construction, reconstruction, or project performed or permitted by the County or its
22 authorized representative(s) which is deemed to be in the interest of the general public.

23 B. Any Permit issued under this Ordinance shall be relocated if the Vending
24 Location or Permit is in conflict with state statutes or County ordinances, or if the Permit was
25 issued in error.

26 C. Any Permit issued under this Ordinance shall be relocated if site changes
27 impact the availability of the location. Such site changes include, but are not limited to,

1 changes in traffic flow, storage, curbing, signalization, speed limits, development, pathways,
2 sidewalks and municipal boundaries.

3 D. The Vendor may be required to cease vending within twenty-four (24) hours
4 of notice by the Engineering Department of County-mandated relocation. To relocate,
5 Permittee must submit an *Application for Permit* with a new location request. No application
6 fee shall be charged. However, if a requested location does not meet the requirements of this
7 Ordinance, the location evaluation fee shall apply to each alternate location requested.

8 E. In the event two (2) or more Permittees are required to relocate, priority for a
9 new location shall be based on Permit seniority date. Permit seniority date is the earliest date
10 available on record with the Engineering Department for continuous active status for that
11 Permit.

12 **SECTION 13. VOLUNTARY RELOCATION**

13 A Permittee may request relocation of his/her current Permit by submitting either an
14 *Application for Permit* or a Wait List Application with applicable fees. Any application for
15 relocation shall be subject to the same review as both new and renewal applications.

16 **SECTION 14. RENEWAL OF PERMIT**

17 A. All Permits issued under this Ordinance shall expire on December 31 of each
18 year. The right to vend expires with the Permit. Vending with an expired Permit is a
19 violation of this Ordinance.

20 B. To renew a Permit, the applicant must submit the application fee, an
21 *Application for Permit* and all necessary documentation showing continuing compliance with
22 all provisions of this Ordinance. The Engineering Department shall evaluate the continuing
23 availability of the location. Once a Location is approved, the applicant must also submit the
24 annual Permit fee.

25 C. The right to renew at an existing Vending Location expires at the close of
26 business of the tenth (10th) business day after the Permit expiration date. If Permittee has

1 not completed the renewal process by then, the Permit shall be considered surrendered.
2 Permit seniority will be lost and the Vending Location will become available to others.

3 **SECTION 15. REVOCATION OF PERMIT**

4 A. Permits may be revoked by the Engineering Department for failure to meet any
5 provisions of this Ordinance, any other County ordinances, state statutes or federal laws.
6 Vendors are expected to comply with all rules and regulations. Permittees may be held
7 accountable for actions of their employees. Grounds for revocation include, but are not
8 limited to, the following:

9 1. Procurement of a Permit through fraud, misrepresentation, false or
10 misleading statements.

11 2. Failure to comply with any Conditions of Permit.

12 3. Vending without a fully opaque covering so that no portion of the male
13 or female genitals, pubic area, 1/3 of the buttocks and any portion of the female breast below
14 the top of the areola is exposed.

15 4. Failure to maintain the integrity of the pavement edge and stabilization
16 of the road.

17 B. The Engineering Department has established points for each violation offense.
18 One point value has been assigned for the first occurrence and another point value for
19 subsequent occurrences of the same offense. A list of offenses and their point assignments
20 shall be issued with each Permit. This list may be amended by the Engineering Department
21 from time-to-time, as deemed necessary or appropriate. When amended, an updated list shall
22 be mailed to each Permittee.

23 Points are cumulative for a given Permit. If a Business Entity has two (2)
24 Permits, points are tallied separately for each. An accumulation of ten (10) points within any
25 twenty-four (24) month period shall result in revocation of that Permit. All accumulated
26 points for a given Permit shall be cleared if no additional points are assigned on that Permit

1 for a twelve (12) month period. Once the accumulated points have been cleared, the next
2 offense in a particular category shall be treated as a first offense.

3 C. A violation report shall be issued. The report shall include the Permit number,
4 name of Permittee, time and date, Vending Location, name of individual vending and nature
5 of violation(s), as well as required corrective action, if any. A copy of the report shall be
6 given to the individual vending at the site. The original shall be maintained on file at the
7 Engineering Department. This report shall indicate all violations observed. Points shall only
8 be assigned for the highest violation cited at any given time. However, subsequent
9 occurrences of **any** of the cited violations shall be assigned points for subsequent (not first)
10 occurrences.

11 A courtesy copy of the violation report and a statement of points assigned, both
12 current and cumulative, shall be mailed to the Permittee. If the cumulative total is ten (10)
13 points or more, the statement shall include official notification of revocation of the Permit.
14 Revocation shall be effective upon mailing this notice to the last address for Permittee on
15 record at the Engineering Department.

16 D. Once a Permit has been revoked, both the Permit and the Permit plate must be
17 surrendered to the Engineering Department. This must be done even in instances where
18 Permittee intends to appeal revocation. The County Engineer or his duly authorized
19 representative(s) may request both Permit and Permit plate, at time of violation. If not, it is
20 the Permittee's responsibility to surrender both, either in person or by mail, at 160
21 Australian Avenue, West Palm Beach, Florida 33406. Failure or refusal to do so after
22 notification of revocation, shall subject Permittee to penalties provided herein.

23 E. When a Permit is revoked, the number of allowable Permits for that Business
24 Entity is decreased by one (1). This decrease remains in effect for a period of two (2) years
25 from the date of revocation. At the end of two (2) years, the number of allowable Permits
26 shall be increased by one (1).

1 F. A modified revocation will occur in cases where a Permit has been issued in
2 error including, but not limited to, on private, state or municipal roads, roads with
3 insufficient right-of-way, within a municipality, abutting a residence, adjacent to a sidewalk
4 or bike path, etc.) A modified revocation means that vending must cease immediately, but
5 no points are assigned nor is the number of allowable Permits for this Business Entity
6 decreased. Engineering staff shall assist the Permittee with relocation, if requested. No
7 additional fees shall be charged. If the Permittee decides to surrender the Permit, a pro-rated
8 portion of the annual Permit fee shall be refunded, upon request.

9 **SECTION 16. APPEAL**

10 A. The following appeal process applies to both denial and revocation of a Permit.

11 1. The applicant (denial) or Permittee (revocation) shall submit to the
12 Engineering Department within seven (7) working days of notification of denial or
13 revocation, a notice of appeal along with a statement setting forth the grounds for appeal and
14 all allegations as to why the Permit should not be denied or revoked. The Engineering
15 Department shall forward this notice of appeal, together with a report of the circumstances
16 surrounding the denial or revocation, to the Board of County Commissioners of Palm Beach
17 County, Florida on the regular agenda at a regularly scheduled County Commission meeting.

18 2. The decision of the Board of County Commissioners of Palm Beach
19 County, Florida shall be conclusive and final. Should the Board of County Commissioners
20 of Palm Beach County, Florida reverse the denial or revocation, the Permit shall be issued
21 or reinstated. All parties shall bear their own costs and expenses of such proceedings and no
22 damages shall be compensable as a result of any County or Engineering Department action
23 hereunder.

24 B. The appeal process for a violation is as follows:

25 The Permittee shall submit to the Engineering Department within seven (7)
26 working days of notice of violation, a notice of appeal along with a statement setting forth
27 the grounds for appeal and all allegations as to why the violation(s) should not be cited. The

1 decision of the County Engineer or his duly authorized representative(s) shall be conclusive
2 and final. Should the decision reverse the violation citation, any points assigned shall be
3 removed and the current number of allowable Permits for this Business Entity shall be
4 increased by one (1).

5 **SECTION 17. LIMITED EXEMPTIONS**

6 A. All Vending Locations permitted upon adoption of this Ordinance are exempt
7 from the location criteria for residential proximity on two-lane roads, and proximity to places
8 of worship, schools and day care facilities.

9 Permits issued at these exempt locations may be renewed each year, provided
10 there is no change in the Permittee or product category, the location has not become
11 ineligible, and all other criteria are met.

12 Under no circumstances will new Permits issued after the effective date of this
13 Ordinance be allowed at the exempt locations.

14 B. At locations with multiple Permits, the two Permits with the earliest Permit
15 seniority date are exempt from criteria limiting the number of Permits per Location to one.
16 Other Permits at these exempt locations shall be required to relocate within ten (10) days of
17 the effective date of this Ordinance. These required relocations shall be exempt from the
18 location criteria specified above in Section 17-A.

19 These exempt Permits may be renewed each year, provided there is no change
20 in the Permittee, Vending Location or product category, the location has not become
21 ineligible and all other criteria are met. Both exempt Permits must be surrendered, relocated
22 or revoked before new Permits can be issued at these Vending Locations.

23 C. Minor location adjustments may be allowed without loss of the above Permit
24 and/or location exemption status, provided these adjustments do not result in any new
25 violation to the provisions of this Ordinance.

1 **SECTION 18. VIOLATION OF ORDINANCE**

2 In addition to sanctions and penalties imposed, violation of this Ordinance shall be a
3 misdemeanor of the second degree. Such violation shall be prosecuted in the name of the
4 State in a court having jurisdiction of misdemeanors by the prosecuting attorney thereof and
5 upon conviction shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00)
6 or imprisonment in the County Jail not to exceed sixty (60) days or by both fine and
7 imprisonment.

8 **SECTION 19. ENFORCEMENT**

9 The Palm Beach County Sheriff's Office, other law enforcement agencies, the County
10 Engineer and his duly authorized representative(s) are authorized and directed to enforce this
11 Ordinance. The provisions of this Ordinance may also be enforced in accordance with
12 Chapter 336, Florida Statutes, or any other means lawfully available for enforcement of its
13 provisions.

14 **SECTION 20. APPLICABILITY**

15 The provisions of this Ordinance shall be in full force and effect and apply to all
16 Vendors seeking to make commercial use of County-owned and maintained rights-of-way
17 in the unincorporated area of Palm Beach County and to all Permits, except those
18 specifically addressed in Section 17 - Limited Exemptions.

19 **SECTION 21. SAVINGS CLAUSE**

20 Notwithstanding the provisions of Section 22, all provisions of Ordinance No. 90-4,
21 as originally enacted and amended by Ordinance No. 94-22 and 97-5, are specifically
22 preserved and shall remain in full force and effect for the limited purpose of enforcing any
23 alleged violations of said Ordinances which violation occurred prior to their repeal.

24 **SECTION 22. REPEAL OF ORDINANCE NOS. 90-4, 94-22, AND 97-5 AND**
25 **LAWS IN CONFLICT**

26 Ordinance Nos. 90-4, 94-22, and 97-5 are hereby repealed in their entirety. All other
27 local laws and ordinances applying to the unincorporated area of Palm Beach County in

1 conflict with the provisions of this Ordinance are hereby repealed to the extent of the
2 conflict.

3 **SECTION 23. SEVERABILITY**

4 If any section, paragraph, sentence, clause, phrase, or word of this Ordinance is for
5 any reason held by the Court to be unconstitutional, inoperative, or void, such holding shall
6 not affect the remainder of this Ordinance.

7 **SECTION 24. INCLUSION IN THE CODE OF LAWS AND ORDINANCES**

8 The provisions of this Ordinance shall become and be made a part of the Code of
9 Laws and Ordinances of Palm Beach County, Florida. The sections of this Ordinance may
10 be renumbered or relettered to accomplish such, and the word "ordinance" may be changed
11 to "section", "article", or other appropriate word.

12 **SECTION 25. EFFECTIVE DATE**

13 The provisions of this Ordinance shall become effective upon filing with the
14 Department of State.

15 **APPROVED AND ADOPTED** by the Board of County Commissioners of Palm
16 Beach County, Florida, this 21 day of October, 1997.

17 DOROTHY H. WILKEN, CLERK

18 PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

19 By: April C. Smith
20 Deputy Clerk

Chairman

21 APPROVED AS TO FORM AND
22 LEGAL SUFFICIENCY

23 By: Melvin R. Smith
24 Assistant County Attorney

25 **EFFECTIVE DATE:** Filed with the Department of State on the 27th day of
26 October, 1997.

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STATE OF FLORIDA, COUNTY OF PALM BEACH
DOROTHY H. WILKEN, Clerk of the
Board of County Commissioners, do hereby certify this to be a
true and correct copy of the original filed in my office
on 10/21/97
DATED at West Palm Beach, FL on 10/31/97
DOROTHY H. WILKEN, Clerk
By: Phyllis A. House D.C.